IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1691 OF 2003

Dnyaneshwar Govind Kulkarni .. Petitioner

Versus

Mrs.Sandhya D.Kulkarni & Anr. .. Respondent

Mr.Vivek Salunkhe i/b. P.B.Shah for petitioner

Mr.R.Y.Mirza, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 8th December 2005.

P.C.

. Heard Mr.Salunkhe for petitioner.

2. This petition under Article 227 of the

Constitution of India read with Section 482 of Cr.P.C. impugns the concurrent findings of fact arrived at the courts below while awarding maintenance to the original applicant (respondent No.1). Application for maintenance was filed under section 125 of Cr.P.C. Application was resisted by the present petitioner. One of the issues framed by the trial Court was whether the original applicant (respondent No.1) proves that she is legally wedded wife of petitioner. After evidence of the original applicant and eight witnesses was recorded and an opportunity was given to the petitioner husband to cross examine them, the trial court has held that the marriage between petitioner and respondent No.1 herein has been proved and she is legally wedded wife of petitioner.

3. This finding of the trial court has been confirmed by the sessions Judge in the Criminal Revision Application No.301 of 2002.

4. Once again, the learned Counsel contends that the courts below have seriously erred in holding that the marriage between petitioner and respondent No.1 is proved. He submits that finding recorded by the Courts below is vitiated by serious errors apparent on the face of record and can safely be termed as perverse. In his submission, parties are Hindu by religion. He submits that Saptapadi was essential part of the rites which are to be performed while solemnising Hindu marriage. In the instant case, there is no proof that marriage was solemnised according to Hindu religious rites and more particularly that seven steps around sacred fire (Hom) were taken by the couple. Even the Priest who has allegedly solemnised the marriage has deposed nothing about the same.

5. Apart from the fact that the relationship was denied, it was not the case of petitioner

before the trial court that marriage was to be solemnised as urged by the learned Counsel herein. In other words, the marriage was to be solemnised according to customary rites and ceremonies and that such customary rites and ceremonies include Saptapadi and, therefore, the marriage cannot be said to be solemnised in accordance with law and the respondent No.1 is not the legally wedded wife is not the plea raised by the petitioner. He denied the Marriage itself. The Supreme Court decision brought to my notice by the learned Counsel specifically states that parties having cohabited together and that the community as well as public recognising them as husband and wife is a factor which cannot be brushed aside while considering the applicartion for maintenance under section 125 of the Cr.P.C. It is well settled that proceedings under section 125 are intended to protect the wife from destitution. The intent and purpose is to see that a wife who is unable to maintain herself is

not rendered destitute. In the instant case, having denied the factum of marriage despite overwhelming evidence of not just Priest but other witnesses including persons who booked the hall and the caterer, petitioner husband cannot be permitted to resile from his obligation to maintain his wife who is unable to maintain herself. This Court cannot go into the adequacy and/or sufficiency of material in exercise of writ jurisdiction. This Court cannot re-appreciate and re-appraise the materials placed on record and come to different conclusion merely because in its opinion, the fact of Saptapadi should also have been noticed and proof tendered in that behalf. Considering the restricted powers conferred upon this Court this is not a fit case for interference. Petition is summarily dismissed.

(S.C.DHARMADHIKARI, J)